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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814,411	03/30/2004	David Lee Eastburn	411951-239	5542
23879	7590	05/18/2005	EXAMINER	
BRIAN M BERLINER, ESQ O'MELVENY & MYERS, LLP 400 SOUTH HOPE STREET LOS ANGELES, CA 90071-2899			WONG, LINDA	
			ART UNIT	PAPER NUMBER
			2634	

DATE MAILED: 05/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/814,411

Applicant(s)

EASTBURN, DAVID LEE 

Examiner

Linda Wong

Art Unit

2634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 March 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 21-25 is/are allowed.
- 6) ☒ Claim(s) 1, 2, 7-13, 19 and 20 is/are rejected.
- 7) ☒ Claim(s) 3-6 and 14-18 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 3/30/2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. **Claims 1-2, 7-10, 11-13, 19-20** are rejected under 35 U.S.C. 103(a) as being unpatentable over McLean (US Patent No.: 6486769) in view of Flammer, III et al. (US Patent No.: 5471469).
  - a. **Claims 1<sup>and 11</sup>**, McLean discloses a radio frequency identification (RFID) system comprising at least 1 transponder composed of a transmitter and receiver (Fig. 2, labels 124a and b) and a processor connected to the transmitter and receiver (Fig. 2, labels 126 and 124). Although McLean does not teach the change to a second frequency before the amount of time available on the first carrier frequency expires, Flammer, III et al. discloses changing the carrier frequency or hops to another frequency if the data transmission is longer or larger than the regulations of the FCC. (Col. 5, lines 3-10) In order to comply with FCC regulations, it would be obvious to one skilled in the art to incorporate Flammer's teaching in McLean's apparatus to change to a second carrier frequency before the amount of time available to the first frequency expires.

- b. **Claim 2**, Flammer, III et al inherently disclose calculating the performance time of the next transaction since the system provided continuously regulates incoming data. (Abstract, lines 1-7)
- c. **Claim 7**, McLean discloses at least one transponder. (Fig. 1, labels 160 and 170)
- d. **Claim 8**, McLean discloses an RF communication system comprising a memory storing instructions, data, and parameters for the processor. Although McLean does not explicitly state the memory component stores information as to when the processor should hop to a different carrier frequency, it would be obvious to one skilled in the art to include such instructions in the memory device as disclosed by McLean to eliminate multiple computations of the same information made accessible through storage.
- e. **Claims 9 and 10**, McLean discloses converting digital signals to analog signals or a digital to analog converter coupled to a processor or control logic (Fig. 3, label 166) and transmitter/receiver (Fig. 3, label 162).
- f. **Claim 12** inherits all the limitations of claim 1.
- g. **Claim 13** inherits all the limitations of claim 2.
- h. **Claim 19**, Flammer III et al disclose comparing the amount of time a signal has been on a first carrier frequency with the amount of time permitted by the FCC. (Col. 5, lines 2-10)
- i. **Claim 20**, Flammer III et al, inherently, disclose determining the amount of time it would take to perform a task before determining the amount of available time.

In Flammer III et al's invention, the amount of time available set by the FCC is compared with the amount of time it would take to perform the transaction. (col. 5, lines 2-10)

***Allowable Subject Matter***

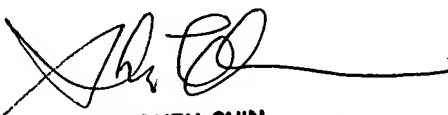
2. **Claims 3-6, 14-18** are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
2. **Claims 21-25** are allowed over prior art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Linda Wong whose telephone number is 571-272-6044. The examiner can normally be reached on 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stephen Chin can be reached on (571) 272-3056. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

LW

  
**STEPHEN CHIN**  
**SUPERVISORY PATENT EXAMINER**  
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